STATE OF MICHIGAN

COURT OF APPEALS

In re DAYKIN/PANCOAST/HANCOCK, Minors.

UNPUBLISHED
September 10, 2015

No. 324994
Wayne Circuit Court
Family Division
LC No. 13-514342-NA

Before: TALBOT, C.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from two orders terminating her parental rights to five of her minor children pursuant to MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (c)(*ii*), (g), and (j). We affirm.

Respondent first argues that the trial court clearly erred when it found clear and convincing evidence to support termination of her parental rights under each of the statutory grounds relied on by the trial court. We disagree.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established."[1] "We review for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence."[2] "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made."[3]

Respondent argues that the trial court erred when it found clear and convincing evidence to terminate her parental rights pursuant to MCL 712A.19b(3)(a)(*ii*). We disagree. Termination is appropriate under this subsection if "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period."[4]

[1] *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

[2] *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). See also MCR 3.977(K).

[3] *Id*. (quotation marks, brackets, and citation omitted).

[4] MCL 712A.19b(3)(a)(*ii*).

The Department of Health and Human Services (DHHS) filed its initial petition on September 16, 2013. Respondent appeared for the preliminary hearing that occurred the following day. However, she failed to appear for the next two hearings, both of which occurred in October, 2013. She appeared for a hearing held on November 12, 2013, where a parent-agency agreement and treatment plan was adopted by the court. Respondent then failed to appear for the following hearing, held on February 3, 2014. The trial court was informed that DHHS had not heard from respondent since December 5, 2013. Over the following months, despite several attempts by DHHS, respondent failed to communicate with DHHS or her children.

The trial court did not hear from respondent until September 19, 2014, when she appeared for and testified at the evidentiary hearing regarding whether statutory grounds existed to terminate her parental rights. At this hearing, respondent admitted that she made no efforts to contact DHHS between December, 2013, and August, 2014. She explained that in March or April, 2013, she left Michigan and traveled to Florida, expecting that a relative in Florida would provide her with sufficient funds to travel back to Michigan. However, this relative did not provide her with any money, and so respondent took a job in Florida so that she could save enough money to return to Michigan. Respondent admitted that she made no attempts to contact DHHS or her children while she was in Florida, despite having ready access to telephones. Respondent returned to Michigan in August, 2014, and contacted DHHS.

In *In re Laster*,[5] this Court found termination proper due to desertion where the respondent father moved out of state, failed to visit his children or support them for a year, and failed to make himself available for court ordered services, even though he maintained some telephone contact with his children. Here, respondent similarly moved out of state, failed to visit her children or provide them with any support, and was not available for any court-ordered services. And unlike the respondent father in *Laster*, respondent did not even attempt to contact her children or DHHS for at least eight months. This was in spite of tremendous effort on behalf of DHHS workers and others to locate and communicate with her. Under these facts, the trial court did not clearly err when it found termination appropriate under MCL 712A.19b(3)(a)(*ii*).[6]

Despite moving out of state and having no contact with her children or DHHS for at least eight months, respondent contends that she sought custody of her children because her appointed attorney appeared at several court hearings on her behalf. Respondent fails to cite any legal authority reaching any such conclusion. Regardless, the plain language of MCL 712A.19b(3)(a)(*ii*) contemplates that a *parent*, not the parent's attorney, seek custody of the child. The record clearly demonstrates that respondent did nothing to seek custody of her children while she was absent from the state.[7]

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[5] *In re Laster*, 303 Mich App 485, 492; 845 NW2d 540 (2013).

[6] See *id*.

[7] There is also no evidence that respondent was even in contact with her attorney during her absence. Rather, it appears that respondent was not in contact with her appointed attorney, as

Because "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights,"[8] this Court need not consider the remaining four statutory grounds cited by the trial court. That said, at least two other statutory grounds were clearly and convincingly established.

Termination of parental rights is appropriate if "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."[9] A parent's failure to comply with a parent-agency agreement is evidence of the parent's inability to provide proper care and custody.[10] Respondent did not simply fail to comply with her parent-agency agreement; she completely disregarded it. She did not maintain contact with DHHS as required under her agreement, and was thus unable to participate in any services offered. Respondent also continued to live with a registered sex offender for at least three months after her children had been removed from her home. She then abandoned her children for eight months, leaving the state and making no attempt to even communicate with them. At the termination hearing, respondent claimed to have adequate housing available and an income appropriate for the support of five minor children. Respondent expressed her intention to "make room" for five children, herself, and her live-in partner in a three-bedroom trailer. While she claimed that she would be able to pay rent for the trailer with income from her new job, she did not know how much utilities would cost. Respondent was also unaware of where her children would attend school. Under these circumstances, the trial court did not err when it found no reasonable expectation that respondent would be able to provide proper care and custody of her children.

Termination of respondent's parental rights was also appropriate because "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of [respondent]."[11] As discussed, respondent completely failed to comply with her court-ordered treatment plan. A parent's "[f]ailure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being."[12] The trial court did not clearly err in concluding that there was a reasonable likelihood that, based on respondent mother's conduct, the children would be harmed if they were returned to her care.

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evidenced by respondent's attorney's comment at the February 3, 2014 hearing that she would "continue to attempt to speak" with respondent.

[8] *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

[9] MCL 712A.19b(3)(g).

[10] *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

[11] MCL 712A.19b(3)(j).

[12] *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000) (quotation marks and citation omitted). See also *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014) ("[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home.").

Respondent also contends that the trial court clearly erred when it found that termination of her parental rights was in the best interests of the children. We disagree.

Once a statutory ground has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights.[13] This Court reviews a trial court's decision regarding whether termination of parental rights is in a child's best interests for clear error.[14] Whether termination is in the children's best interests must be proven by a preponderance of the evidence.[15] In considering whether termination of parental rights is in the best interests of the child, "the court should weigh all the evidence available to determine the children's best interests."[16] These factors include the existence of a bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the child's well-being, and the possibility of adoption.[17]

Respondent presents four reasons why she believes the trial court erred when it found that termination was in the children's best interests. First, respondent claims that the trial court should not have considered the children's best interests because no statutory grounds for termination were proven by clear and convincing evidence. As explained, statutory grounds for termination were proven by clear and convincing evidence. Thus, the trial court was required to consider the children's best interests.[18]

Second, respondent argues that the trial court's best interests decision was flawed because the trial court heard testimony regarding the alternative homes offered to respondent's children by their relative placement providers prior to finding statutory grounds for termination. Respondent relies on *Fritts v Krugh*[19] to support her position. However, this Court has explained that *Fritts* was decided prior to an express amendment to the termination statute.[20] Under this amendment, "while it is inappropriate for a court to consider the advantages of a foster home in

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[13] MCL 712A.19b(5). See also *Moss*, 301 Mich App at 86.

[14] *Trejo*, 462 Mich at 356-357.

[15] *Moss*, 301 Mich App at 90.

[16] *White*, 303 Mich App at 713.

[17] *Id*. at 713-714.

[18] *Moss*, 301 Mich App at 90.

[19] *Fritts v Krugh*, 354 Mich 97; 92 NW2d 604 (1958), overruled on other grounds *In re Hatcher*, 443 Mich 426 (1993).

[20] *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

deciding whether a statutory ground for termination has been established, *such considerations are appropriate in a best interests determination*."[21] Respondent's argument is devoid of merit.

Third, respondent claims that the trial court clearly erred because it did not consider the fact that the children were placed with relatives in its best interests determination. Placement of a child with a relative " 'weighs against termination under MCL 712A.19a(6)(a),' " and must be considered as part of the best interest determination.[22] Respondent mother is correct in that "[a] trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal."[23] However, the record shows that the trial court addressed the children's placement with relatives when reaching its best-interests determination. At the hearing, the trial court acknowledged that the children have flourished in their current home environments, and explicitly noted that, "even though the children are placed with relatives," termination was in their best interest. Additionally, the court's written orders stated that the court took into account that the children were placed with relatives before concluding that it was in the children's best interests to terminate respondent's parental rights. Respondent's argument is not supported by the record.[24]

Finally, respondent argues that the trial court clearly erred when it found that termination was in the children's best interests because it failed to consider IJH's "special bond" with her mother. The strength of a child's bond with their parent is only one factor among many that the trial court may consider when it makes a best-interests determination.[25] The trial court heard minimal testimony related to IJH's bond with respondent, which demonstrated that IJH is the only one of the children that ever asks to see respondent. The court also found that respondent had a lengthy history with Child Protective Services, failed to comply with her parent-agency agreement, abandoned her children without a call, letter, or financial support for the majority of a year, had a history with substance abuse that had not clearly been resolved, and had knowingly allowed all of her children to reside in the care of a registered sex offender. The trial court considered each child's need for permanence and stability, and noted the drastic improvement in

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[21] *Id*. at 635 (emphasis supplied). See also *White*, 303 Mich App at 713 (one factor to be considered at the best-interests stage is the advantages of a foster home over the parent's home); *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012) (same).

[22] *Olive/Metts*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010).

[23] *Id*.

[24] In this third argument, respondent also asserts that the trial court's conclusion that the relatives caring for some of the children wished to adopt those children was clearly erroneous. According to respondent, this is because the parental rights of the father of these children were not terminated, and thus, these children were not available for adoption. That the children were not yet available for adoption does not render the factual finding that others *desired* to adopt these children clearly erroneous. Hope and reality are not one in the same.

[25] *White*, 303 Mich App at 713-714.

each child's behavior and outlook since being removed from their mother's care. Although there was some minimal evidence of a bond between respondent and IJH, given the totality of the circumstances, the trial court did not clearly err when it found that terminating respondent's parental rights was in IJH's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood